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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
DIVISION

RICHARD AND MARY HARTZELL, Plaintiff, vs. QUALITY LOAN SERVICE CORP., Defendants.	Case No. 10-6230 **RESPONSE TO AND IN OPPOSITION TO MOTION FOR RULE 11 SANCTIONS AND MOTION TO STRIKE**

SERVICE UPON DEFENDANT HAS NEVER BEEN COMPLETED

For federal cases in Oregon service can be made by one of the procedures of FRCP 4 or ORCP 7. The primary service method under either rule is by office service, i.e. service on a registered agent, officer, director, etc. or a duty clerk of the registered agent. FRCP 4(h), ORCP 7 D(3)(b)(i). Substitute service can be accomplished pursuant to ORCP 7 D(2)(c) by leaving a copy at the corporate office. However, this substitute service also requires mailing. Service is not completed until mailing is completed.

Plaintiff's "Declaration of Service" shows that a drop service was made on August 5, 2010 by "personally delivering copies to the person served." It does not identify the person served as a duty clerk, or other person authorized to accept service. This type of substitute drops service requires

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mailing a copy of the complaint and summons to complete service. This was never accomplished. Thus service has therefore never been completed. Defendant nevertheless filed an appearance as soon as it became aware of the proceedings and contacted Plaintiff by phone.

THE CASE SHOULD BE DECIDED ON ITS MERITS AND PLAINTIFFS CLAIMS LACKS MERIT- PLAINTIFFS HAVE SUED THE WRONG PARTY WITH RESPECT TO ALLEGATIONS RAISED IN THE COMPLAINT

Default judgments are ordinarily disfavored, since cases should be decided upon their merits whenever reasonably possible. *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985). There is in fact a strong policy of deciding cases on their merits rather than by default. *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir. 1986). The court should also look at the sufficiency of the complaint and the merits of plaintiff's substantive claim. *Id.* As indicated in Defendant's filed Memorandum in Support of Motion to Dismiss, Plaintiff's claim is deficient in its pleadings, and lacks merit. Plaintiff's claims are difficult to comprehend, but majority of allegations have nothing to do with a foreclosure, but involve generalized allegations of *bad* behavior at the loan origination stage, and in the (alleged) subsequent securitization of the loan. Nevertheless, Plaintiff chose to dismiss his Lender/Servicer and instead has named the foreclosing agent. The named Defendant is not the party that originated the loan, or could be in a broad sense be referred to as a "Lender," and HARTZELL has made no factual allegations that the Defendant QLS is the "Lender" or "Lenders" to which HARTZELL refers in his pleadings. As can be seen by Plaintiff's own pleadings, his "Lender" was "First Horizon Home Loan Corporation", and the settlement agent "Western Title & Escrow Company." *See Response to Rule 12 Motion, Docket # 19, page 8.* The named Defendant, Quality Loan Services, appears nowhere in the documents that Plaintiff has attached to its pleadings. Defendant's motions to strike should therefore be denied.

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PLAINTIFFS MOTIONS ARE FILED TO CAUSE UNNECESSARY DELAY AND NEEDLESSLY INCREASE COSTS.

This is a textbook case of the *pot calling the kettle black:* "They are wasting the time of the Plaintiff and the Court, and are shadowing the seriousness of the case at hand." Docket # 17, Page 3. Plaintiffs are making this accusation even though they are fully aware that the named Defendant is the wrong party with respect to their claims. Plaintiffs were advised of that fact but are choosing to go forward without any effort to amend their pleadings.

Apparently Plaintiffs consider themselves prosecutor, judge and jury, since they consider any effort to defend oneself against frivolous accusations as harassment. Plaintiff, in all seriousness, suggests that Defendant has made an appearance and filed its motion to dismiss in an effort to "harass, cause, unnecessary delay, or needless increase the cost of litigation." Docket #17, page 2. This type of argument is nothing but a mocking parody of court pleadings. What Plaintiff has filed appears to be nothing more than simple boilerplate pleadings that repeat formulaic and conclusory allegations like a prayer wheel, without even addressing Defendant's motion directly. These pleadings are not only non-responsive, they make a mockery of the legal proceedings. It is thus Plaintiff that is wasting judicial resources on a frivolous claim and calling the seriousness of the case at hand into question. Defendant therefore requests that Plaintiff's motion for Rule 11 sanctions be denied.

DATED September 20, 2010

McCarthy & Holthus, LLP
/s/ Holger Uhl
By_____
Holger Uhl, Of the Firm
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 20, 2010, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing:

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Additionally, a copy of the foregoing was served on the following parties by first class mail, postage prepaid, addressed to:

Richard and Mary Hartzell
4299 NE 29th St.
Redmond, OR 97756

/s/ Holger Uhl

Holger Uhl

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